Supreme Court, U.S.
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IN THE
Supreme Court of the United States

RICHARD I. FINE,

Petitioner,

v.

STATE BAR OF CALIFORNIA
SUPREME COURT OF CALIFORNIA,

Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of California

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether receipt of illegal "unconstitutional payments" from counties by members of the California Supreme Court, and the receipt of "retroactive immunity" from criminal prosecution, civil liability, and discipline for such activity through legislation written by the Judicial Council of California on which other members of the California Supreme Court were participants and members, violates Petitioner's Fifth and Fourteenth Amendment rights when such members of the California Supreme Court refused to recuse themselves from Petitioner's disbarment case and decided that Petitioner was guilty of "moral turpitude" for filing cases challenging the illegal "unconstitutional payments" from counties to judges?

2. Whether the First Amendment rights are violated by using the words "moral turpitude" as a reason to disbar Petitioner from making truthful and sound pleadings in Courts?

3. Whether Petitioner was denied due process by various acts of the Office of Chief Trial Counsel of the California State Bar and State Bar Court judges?

4. Whether the statutory system of the California State Bar Act denied Petitioner due process both as to lack of notice and "appearance of justice"?

PARTIES

All parties to the proceedings are named in the caption of the case. No corporate Rule 29.6 statement is required as there are no corporations involved.

TABLE OF CONTENTS

Page

Questions Presented i

Parties and Rule 29.6 ii

Table of Authorities v

Opinion Below 1

Jurisdiction 1

Statutory Provisions Involved 1

Statement of Issues 2

Standard of Review 2

Summary of the Case 3

A. Introduction 3
B. Case History 8
C. Actions of the State Bar 10
D. "Alternative Disciplinary System" 12

Reasons for Granting Certiorari:

Arguments 13

1. Vitiates Freedom of Speech 14
2. Moral Turpitude 15
3. California Business & Professions Code 15
4. Unconstitutional Payments and Recusal 16
5. Complete Alternative Disciplinary Procedure 16

Conclusion 20

Page

APPENDIX:

Order of March 25, 2009 ..... 1a

Opinion and Order Denying Motion to Dismiss ... 3a

California Code Section 6007(c) 49a

Rule of Procedure 305 ..... 51a

California Civil Code 68220-68222 ..... 52a

Cal. Constitution, Art. 6, Section 19 ..... 54a

TABLE OF AUTHORITIES

Pages

Cases:

Aetna Life Ins. Co. v. Laudie, 475 U.S. 813 (1986) 13

Caperton et al. v. A.T. Massey Coal Co., et al, Slip Op., No. 08-22 Decided June 8, 2009 13

Fine v. Superior Court, 97 Cal.App.4th, 651 (2002) 6

Levine v. U.S. 362, U.S. 610(1960)... 17

Richard I. Fine v. The Sheriff of Los Angeles County, Case No. CV 09-1914 JFW 7

Richard I. Fine v. U.S. District Court and Sheriff of Los Angeles County (Sheriff of Los Angeles County), Case No. 09-71692. 8

Sturgeon v. County of Los Angeles, 167 Cal.App.4th 630 (2008) 9

Tumey v. Ohio, 273 U.S. 510 (1927) 13

Withrow v. Larkin, 421 U.S.35(1975) 2

Table of Authorities continued

Page

STATUTES AND REGULATIONS

California Business & Professions Code § 6007(c) 15

Cal. Stat. §§ 68220 to 68222 6

Rule of Procedure No. 305 9

California Constitution Art. VI, § 19 4

U.S. Constitution, 1st, 5th and 14th Amendments .. 20

28 U.S.C. § 1257 1

OPINION BELOW

Opinion and Order of Review Department of the State Bar Court In Matter of Richard Fine; Minute order of California Supreme Court denying petition for a writ of review; Minute Order of California Supreme Court denying petition for a writ of review and denial of petition for rehearing on March 25, 2009.

STATEMENT OF SUBJECT MATTER JURISDICTION

Subject matter jurisdiction in the district court is based on 28 U.S.C. §1257. The appeal is from a final judgment of the California Supreme Court entered on February 11, 2009 and petitioner's timely filed on February 13, 2009 and from the denial on March 25, 2009 of Petitioner's Motion to Dismiss NDC for Illegal Actions and Petitioner's Motion to Dismiss NDC for Bias and the denial of Petitioner's Petition for Rehearing.

STATUTORY PROVISIONS INVOLVED

California Business & Professions Code § 6007(c).

Cal. Stat. §§ 68220 to 68222

Rule of Procedure No. 305

California Constitution Art. VI, § 19

U.S. Constitution, 1st, 5th and 14th Amendments

28 U.S.C. § 1257

STATEMENT OF ISSUES

1. Whether receipt of illegal "unconstitutional payments" and the receipt of "retroactive immunity" by Los Angeles County Judges violated Petitioner's First, Fifth and Fourteenth Amendment rights, when such members of the California Supreme Court refused to recuse themselves from Petitioner's disbarment case?

2. Whether the First Amendment rights are violated by using the words "moral turpitude" as a reason to disbar Petitioner?

3. Whether Petitioner was denied due process by various acts of the Office of Chief Trial Counsel?

4. Whether the statutory system of the California State Bar Act denied Petitioner due process?

STANDARD OF REVIEW

The Court reviews the facts to apply objective standards that require recusal when "the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable." *Withrow v. Larkin*, 421 U..S. 35, 47 (1975)

STATEMENT OF CASE

A. Introduction This petition seeks the Court's intervention to restore the First, Fifth and

Fourteenth Amendment rights and to reinstitute meaningful access to the courts for thirty-eight (38) million Californians and over two hundred thousand (200,000) California lawyers.

Petitioner comes to this court as a person who represents the positive ideals of the legal profession. He is a graduate of the University of Chicago Law School and holds a Ph.D. in international law from the London School of Economics and Political Science. He has worked for the anti-trust division of the U.S. Department of Justice and founded the anti-trust division for the City of Los Angeles, which was the first municipal anti-trust division in the United States.

Since 1995, he has been the honorary Consul General of the Kingdom of Norway in Los Angeles and for various counties in Southern California. He has written on legal matters, been active in bar associations, and changed the rights of Americans in positive ways through the cases he has brought and fought.

For example, he required United Way to allow donors to designate where their contributions should go instead of United Way's officer's designating such; returned to, and saved California residents over one billion dollars in money illegally taken by state, county and city governments; stopped the California government from illegally making payments when it did not have a budget; reorganized the California consumer service industry when the state did not

enforce the consumer law; brought the first case involving a terrorist shooting and killing at a U.S. airport; wrote two extensive anti-trust amicus briefs in cases which prevailed in this Court; and brought and tried the case against OPEC, in which Justice Scalia also participated; amongst other activities.

Petitioner now comes to this court both on his own behalf and on behalf of 38 million Californians and over 200,000 California lawyers who have lost their constitutional rights and meaningful access to their judicial system.

Commencing in the 1980s, Los Angeles County began making payments to Los Angeles County Superior Court judges, who are state-elected officials and whose compensation is set by the state legislature pursuant to Article VI, § 19, of the California Constitution. Thereafter, all counties with the exception of Mendocino, San Francisco and Yolo Counties commenced making such payments. By 2008, the Los Angeles county payments to Los Angeles Superior Court judges were approximately $46,380. The total compensation was approximately $249,000, which included a state salary of approximately $179,000 plus extensive state benefits. The effect of the Los Angeles County payments, as shown by the Annual Litigation Reports of the Los Angeles County Counsel[1] for the fiscal years 2005-2007, was that no person won a

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[1] Los Angeles County Council annual litigation reports are available on line at the site of the Los Angeles County Counsel, http://counsel.lacounty.gov/ar.asp

case against Los Angeles County when a Los Angeles County Superior Court judge made the decision on the case. This was contrasted to people winning the cases when a jury made the decision.

None of the Superior Court judges who received payments from counties recorded such payments on their financial disclosure forms, despite the requirement to do such. Further, no Superior Court judges recused themselves, with few exceptions, when a County case was before them.

Petitioner was the only attorney in California to challenge the unconstitutionality of the Los Angeles County payments to the Los Angeles County Superior Court judges. (To Petitioner's knowledge, no attorney challenged county payments to any other Superior Court judges.) Petitioner's challenges were made in Federal civil rights lawsuits and appropriate state court pleadings. The Los Angeles County Superior Court retaliated by filing a complaint with the California State Bar. This complaint resulted in petitioner's disbarment for the filing of the Federal civil rights lawsuits, amongst other truthful pleadings. This disbarment is the subject of the present petition.

During the course of the disbarment proceedings, the organization called Judicial Watch brought the case of *Sturgeon v. The County of Los Angeles*, which challenged the constitutionality of the Los Angeles County payments under Article VI, § 19, of the California Constitution. The California Court of Appeal held in the *Sturgeon* case (167

Cal.App.4th 630 (2008), review denied Dec. 23, 2008), that the Los Angeles County payments to Los Angeles County Superior Court judges were unconstitutional and violated Article VI, § 19, of the California Constitution. In reaction to such decision, as shown by the legislative history, the Judicial Council of California wrote Bill SBX2 11[2]. Such bill was enacted on February 20, 2009, becoming California government code sections 68220 to 68222. Senate Bill SBX2 11 gave retroactive immunity from criminal prosecution, civil liability and disciplinary action to all judges, public officials and employees who were involved with the payments from the counties.

To Petitioner's knowledge, no state or the Federal government has given any retroactive immunity for such acts, or similar acts. The California judges and justices who have received such illegal and unconstitutional payments, and such retroactive immunity, still refuse to recuse themselves, including the members of the California

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[2] The court's attention is drawn to the fact that in Senate Bill SBX 211 the legislature also allowed the counties to continue their payments to the Superior Court Judges after the Sturgeon decision. This portion of Senate Bill SBX 211 may be unconstitutional under article 6 section 19 of the California constitution as the legislature's duty to set the compensation of the judges is not delegable under California case law. Other parts of the California constitution further prohibit the legislature from allowing counties to approve expenditures for work that has already been performed. In this instance by compensating Superior court judges for work that they have performed, both the counties and the legislature are violating the California constitution.

Supreme Court, who denied Petitioner's petition for review in the disbarment case, which is the subject of this Petition. Such disbarment case disbarred Petitioner for bringing the Federal civil rights lawsuits that challenged the Los Angeles County payments to the Los Angeles Superior Court judges as being a violation of Article VI, § 19, of the California Constitution.

Even more egregious, while this petition is being prepared, Petitioner is presently approaching his one-hundredth (100th) day in the Los Angeles County Jail (his incarceration commenced on March 4, 2009), waiting for the District Court for the Central District of California to issue a writ of habeas corpus for his false imprisonment by a Los Angeles Superior Court judge who refused to recuse himself in a contempt proceeding involving Los Angeles County and admitted Los Angeles County payments to him.

The case is *Richard I. Fine v. The Sheriff of Los Angeles County*, Case No. CV 09-1914 JFW (CW). The District Court has had the Petition for Writ of Habeas Corpus since March 20, 2009. The Sheriff did not answer the petition, as required under 28 U.S.C. § 2243, and the April 7, 2009, Order of the District Court. The District Court has done nothing.

Petitioner has filed a second Petition for Writ of Habeas Corpus denominated as a writ of mandate with the Ninth Circuit on June 2, 2009. The case is *Richard I. Fine v. U.S. District Court and Sheriff of Los Angeles County* (Sheriff of Los Angeles County

Has Custody Of Prisoner), Case No. 09-71692. As of the time of the writing of this Petition, the Ninth Circuit has done nothing to compel the District Court to issue the writ of habeas corpus.

Only the intervention of this Court can return a judicial system to California.

B. CASE HISTORY

This is a case of first instance in which the Office of Chief Trial Counsel of the State Bar of California charged Petitioner with twenty-two (22) counts of "moral turpitude" for filing pleadings in state and Federal court. After losing all counts of false statements (2, 4, and 17) and other counts, the Office of Chief Trial Counsel did not appeal. Petitioner appealed to the State Bar Review Department, which found Petitioner not guilty on further counts. Petitioner then filed a petition for review with the Supreme Court of California.

The Supreme Court of California denied Petitioner's petition for review on February 11, 2009, and the decision would have become final on March 13, 2009, under the Rules of the Supreme Court of California (California Rules of Court). Motion for rehearing was denied on March 25, 2009. On the same day, the Supreme Court of California denied Petitioner's motions to recuse the Supreme Court justices for having received illegal "unconstitutional payments" and retroactive immunity for receiving such illegal "unconstitutional payments" and for

having drafted Senate Bill SBX2 11.

The State Bar Court review department had recommended that Petitioner be disbarred for the act of "moral turpitude," for filing pleadings in Federal and state courts, in particular civil rights cases challenging the constitutionality of the payments from Los Angeles County to Los Angeles County Superior Court judges under Article VI, § 19, of the California Constitution and the U.S. Constitution.

The Supreme Court of California denied review knowing that Petitioner was correct and truthful in his pleadings, based upon the holding of the Sturgeon case, supra.

The Supreme Court of California also knew that the State Bar Court hearing department had found Petitioner not guilty on Counts 2, 4 and 17 (making false statements), and that the State Bar Court review department "sua sponte" reversed such ruling without notice or hearing, in violation of the State Bar Rule of Procedure No. 305 and without a State Bar Office of Chief Trial Counsel appealing such hearing department decision and specifically stating that it was not appealing such.

The State Bar Office of Chief Trial Counsel further stated, in its Responsive Brief in the State Bar review department, that it was not prosecuting Petitioner for the contents of Petitioner statements, Petitioner speech or Petitioner rhetoric. Both the State Bar review department and the California

Supreme Court knew that all remaining counts encompassed truthful statements in pleadings filed in courts.

Further, the Office of Chief Trial Counsel had not shown that any substantive legal position taken by Petitioner in any underlying case was incorrect. This was essentially true with reference to the California Court of Appeal case cited by the State Bar Court entitled *Fine v. Superior Court*, 97 Cal.App.4th 651 (2002), which related to a contempt decision which was later voided and annulled after a petition for a writ of habeas corpus was filed in the U.S. District Court, and the U.S. District Court issued a stay of execution of sentence and an order to show cause for issuance of a writ of habeas corpus without hearing.

Under these circumstances, all of Petitioner's actions were protected by the First Amendment and could not be encompassed by the words "moral turpitude."

C. ACTIONS OF THE STATE BAR

The Office of Chief Trial Counsel filed the Notice of Disciplinary Charges (NDC) without the permission of the State Bar Court as required under the State Bar Rules of Procedure when a previous complaint had been dismissed by the Office of Chief Trial Counsel regarding the same transaction. A previous complaint filed in 2003 had been dismissed by the Office of Chief Trial Counsel in 2004 on the grounds of the "furtherance of justice," thereby

precluding the State Bar from filing a new complaint without the consent of the State Bar Court after the elapse of a two-year time period which occurred in the present case.

In response to a motion to dismiss, the Office of Chief Trial Counsel misrepresented that it had commenced an investigation leading to the NDC to avoid a statute of limitations, including the five-year statute of limitations with respect to any act in the NDC, when in fact a Los Angeles court commissioner who had received illegal Los Angeles county payments later admitted to be the "complaining party" at the trial of the NDC.

The Hearing Department judge did not disclose that he was on the board of governors of a charity which received $30,000 from Los Angeles County and served on such board with a Los Angeles County representative, during the time period that he was hearing Petitioner's case and deciding the issues of the illegal Los Angeles County payments.

The Office of Chief Trial Counsel refused to provide the names of witnesses and documents supporting its case while obligated to do so under the State Bar Rules of Procedure.

D. "ALTERNATIVE DISCIPLINARY SYSTEM"

Under the State Bar Act, two methods exist to discipline California attorneys. The first is to bring charges in a court of record and then proceed with

appeals to a California Court of Appeal and a petition for review to the Supreme Court of California. Under this method, the disciplined attorney receives a trial in a court of record and if he loses, does not bear the cost of the prosecution or the costs of salaries of the judges. He only pays the obligatory normal court costs.

The "alternative disciplinary system," as set forth in the State Bar Act, allows a disciplinary case to be commenced by the Office of Chief Trial Counsel in the Hearing Department of the State Bar Court through the filing of a NDC. A "de novo" appeal is available to the review department of the State Bar Court and a petition for review may be sought in the Supreme Court of California. The attorney does not receive any hearing by a court of record unless the Supreme Court of California allows a review to take place by granting the petition for review.

If the Supreme Court of California denies a petition for review, the recommendation of the review department becomes the order of the Supreme Court of California by statute. A disciplined attorney will not have a hearing with the Supreme Court of California or any court of record. Further, any and all costs of the State Bar, including those of the judges, are made as a judgment against the disciplined attorney.

The State Bar Court judges are employees of the State Bar, along with the Office of Chief Trial Counsel. The sources of funds for the State Bar are judgments against disciplined attorneys and dues

from members, which are set by the state legislature independent from the State Bar. The State of California does not fund the State Bar.

History has shown that the state legislature at times has not set dues for the State Bar and the State Bar has closed, leaving the judges entirely dependent upon judgments for their salary. Also in times of crises, the State Bar may not have enough money to pay judges from dues and judgments are a necessity in order for the State Bar judges to be paid.

This direct relationship between the judgments and the judges creates a situation under which the judges are not considered to be impartial and denial of due process may occur. *See Tumey v. Ohio, 273 U.S. 510 (1927); Caperton et al. v. A.T. Massey Coal Co., et al,* Slip Op., No. 08-22, decided June 8, 2009; and *Aetna Life Ins. Co. v. Laudie*, 475 U.S. 813 (1986).

REASONS FOR GRANTING CERTIORARI:

ARGUMENT

This is a case that strikes at the heart of the fundamental First, Fifth and Fourteenth Amendment rights and the integrity of our judicial system.

The specific reasons for the Court to grant certiorari are:

1. The disbarment of Petitioner for acts of "moral turpitude" for the filing of truthful pleadings in Federal and state courts, and in particular Federal civil rights lawsuits, challenging the illegal "unconstitutional payments" from Los Angeles County to Los Angeles Superior Court judges vitiates every person's First Amendment freedom of speech and the right to petition the government for a redress of grievances. The court's attention is drawn to the fact that in Senate Bill SBX 211 the legislature also allowed the counties to continue their payments to the Superior Court Judges after the Sturgeon decision. This portion of Senate Bill SBX 211 may be unconstitutional under article 6 section 19 of the California constitution as the legislature's duty to set the compensation of the judges is not delegable under California case law. Other parts of the California constitution further prohibit the legislature from allowing counties to approve expenditures for work that has already been performed. In this instance by compensating Superior court judges for work that they have performed, both the counties and the legislature are violating the California constitution.

Disbarment is particularly pernicious in that it further "chills" and removes the Sixth Amendment right to legal representation in criminal cases.

Unless this Court grants certiorari and upholds the First Amendment, these rights are forever lost.

2. California is the only state to apply "moral turpitude" to truthful pleadings filed in courts. The California Business & Professions Code § 6106's use of the words "moral turpitude" in addition to the word "dishonest" encompasses truthful pleadings filed in courts protected by the First Amendment. Whether the facts and circumstances of petitioner's misconduct constitute moral turpitude is a question of law to be determined by this court. (*See In re Strick* (1983) 34 Cal. 3d 891, 901 [196 Cal. Rptr. 509, 671. This usage affects over 200,000 California lawyers and 38 million Californians by depriving them of the right to file pleadings in cases.

3. The California Business & Professions Code § 6007(c)(4) requires a State Bar court (which is not a court of record under the California Constitution or an administrative tribunal) to order an attorney inactive after a recommendation of disbarment. This recommendation occurs after "hearing" of a charge on an unrelated Section to California Business & Professions Code § 6007(c). This is done without prior notice to the attorney that such inactive order will occur with respect to such unrelated charge. This affects over 200,000 California lawyers.

4. At present, Supreme Court of California justices, or any judge or justice who received illegal "unconstitutional payments" from a county and/or wrote legislation granting retroactive immunity from criminal prosecution, civil liability and discipline for judges who received illegal "unconstitutional payments" are refusing to recuse themselves from

cases where such payments are an issue or where they have received such payments and have retroactive immunity. This affects due process and the right to a fair trial in every court in California, thereby affecting the meaningful access to justice for 38 million Californians and the ability for 200,000 lawyers to represent their clients.

5. Under the "complete alternative" disciplinary procedure of the California State Bar Act, the State Bar Office of Chief Trial Counsel prosecutes disciplinary cases before State Bar Court judges who are employees of the State Bar. The State Bar Court judges then make recommendations to the Supreme Court of California, which recommendations become disciplinary orders without a Supreme Court of California hearing or review if the Supreme Court of California denies a Petition for Review. The State Bar Act also provides that the costs of the State Bar, without limitation, including the cost of the State Bar judges, are made as judgment against the disciplined attorney. This procedure, under which both the office of the Chief Trial Counsel and the State Bar Court judges are employed by the State Bar, which is a public corporation under the California Constitution, influences the State Bar Court judges[3] to decide against the attorney in order to obtain monies for their salaries and removes the "appearance of justice". *See Levine v. U.S.*, 362 U.S.

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[3] Los Angeles County Council annual litigation reports showing that no case was won against LA county during the fiscal years 2005-2006 & 2006-2007 when an LA Superior Court Judge made the decision on the case, are available on line at the site of the Los Angeles County Council.

610(1960) ruling and re-affirming the principle that justice must satisfy the "appearance of justice". The result of this system affects over 200,000 California attorneys.

A convergence of events poises California's future at a critical juncture from which only two paths exit: one, following intervention by the U.S. Supreme Court, will restore its thirty-eight million citizens' right to access an unbiased judiciary; the other will sanction the continuing unjust enrichment of California's judges and further those judges' ongoing destruction of faith in the system while they issue rulings with impunity which enrich their benefactors while leaving taxpayers to continue footing the bills amounting to hundreds of millions of dollars, without hope that necessary corrections will ever be made.

The California Supreme Court preferred sanctioning its lower courts' blatant judicial bias in favoring Los Angeles County in cases in which it was a party litigant while judges simultaneously received proven-unconstitutional bonus payments from the County which illegally added 25% to their State-controlled salaries. That court's egregious tolerance of judicial corruption has resulted in an ineluctable course of circumstances and events costing entitled litigants and taxpayers millions and culminated in Petitioner's ongoing incarceration (since March 4, 2009, on a manufactured charge of contempt of court, following a hearing in which the judge was both trier of fact and adverse witness) and, on the issue before the U.S. Supreme Court, disbarment for

"moral turpitude" in seeking recusal of judges so influenced, despite the October 2008 holding in *Sturgeon v. County of Los Angeles* (167 Cal.App.4th 630 (2008), review denied December 23, 2008) confirming that such payments, which began in the late 1980s, are unconstitutional.

Immediately after *Sturgeon* was published, various California judges' associations retained and paid $60,000 for a lobbyist well-connected with both the County administrators and the Legislature who returned with Senate Bill SBX2 11 as their prize, which bill was rushed through passage during late hours in a second emergency legislative session as a trailer to an urgently needed budget bill. SBX2 11 bestowed retroactive immunity upon the judges and authorized the County to continue making the payments (which boost judges' salaries by almost $47,000 per year, giving them a total salary and benefits package worth over $249,000).

SBX2 11 exacerbated the corrupt atmosphere which now permeates California's judicial system rather than providing any solution of benefit to, and protection of the people. It protects judges from consequences of their acts of wrong-doing, but does nothing to restore California citizens' most basic right to access an unbiased judiciary with confidence of impartiality therein.

Petitioner Richard I. Fine, a California attorney licensed since 1973, was disbarred in the twilight years of an illustrious career on September 19, 2008, by the California State Bar Association. His appeals

to the California Court of Appeals and California Supreme Court were denied review. Many members of the appellate courts were former Superior Court judges in Los Angeles County who also received the illegal payments in their earlier careers.

Fine's conflict stems back to June 1999 when a Los Angeles Superior Court Commissioner, who'd been receiving the illegal payments from the County for years, effectively stole over $2 Million Dollars from a class action settlement fund in *DeFlores, et al, v. EHG National Health Services, et al.* (Los Angeles Superior Court Case No. BC 150607.)

In attempting to recover these monies, Petitioner discovered that every judge on the Los Angeles Superior Court had been receiving the illegal payments since 1999. Fine also uncovered Litigation Cost Reports which showed that the County began to enjoy a near-perfect win history in cases decided by judges wherein the County was a party litigant.

Having exhausted every other avenue of relief, Fine remains in isolation in the "worst" jail in America (according to a 2008 ACLU report), without counsel, without bond, without a hearing date, until such time as he may choose to relent and renege on the principal of demanding neutrality from the judicial system that incarcerated him.

Severely muffled but carrying an injustice that could never be fully silenced, Petitioner respectfully requests that this Court consider the above issues as

it weighs the necessary steps which must be undertaken to finally end and forever resolve the precarious situation that has befallen California's courts, which were created to resolve its citizens disputes, not confound them:

CONCLUSION

California is in a state of constitutional anarchy. Its citizens have lost their First, Fifth, and Fourteenth Amendment rights and meaningful access to the courts. They suffer under a judiciary that has received illegal "unconstitutional payments" from counties and retroactive immunity from criminal prosecution, civil liability and discipline for such acts.

The judges refuse to step down or recuse themselves. This has resulted in a plethora of void judgments due to the judges' lack of jurisdiction to hear the cases because of an illegal payment from an interested party; i.e., a county, or other financial impropriety resulting from the illegal payment.

California citizens have requested the U.S. Attorney General to investigate such improprieties as violations of the intangible right to honest services (18 U.S.C. 1341, 1343, and 1346) but no relief has been forthcoming.

But for the convergence of constitutional violations resulting in Petitioner's disbarment and the filing of this Petition, 38 million Californians would still be destined to suffer under the tyranny of

deprivation of First, Fifth, and Fourteenth Amendment constitutional protections and deprivation of meaningful access to the courts.

Petitioner respectfully requests that the Court accept this Petition and intervene to restore Constitutional protections and the rule of law to 38 million Californians.

Respectfully submitted,

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Dated: June 11, 2009
*Counsel of Record

APPENDIX

CALIFORNIA APPELLATE COURTS
Case Information

Supreme Court

Docket (Register of Actions)

Fine on Discipline
Case Number S168418

* * * *

Date: 02/11/2009
Description: Pet/writ of review & stay request denied; disbarred
Notes: The application for stay and petition for a writ of review are denied. The "Motion for Dismissal" under Code of Civil Procedure section 425.16 is denied. The court orders that Richard Isaac Fine, State Bar No. 55259, be disbarred from the practice of law and that his name be stricken from the roll of attorneys. The court orders that Richard Isaac Fine comply with rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of this order. (Bus. & Prof. Code, section 6126, subd. (c).) Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and

Professions Code section 6140.7 and as a money judgment. Werdegar, J. was absent and did not participate.

* * * *

Date: 03/25/09

Description: Request for Rehearing of State Bar discipline denied

Notes: The "Motion to Dismiss NDC for Bias" filed February 23, 2009 is denied. The "Motion to Dismiss NDC for Illegal Actions" filed February 25, 2009, is denied. The petition for rehearing is denied

* * * *

PUBLIC MATTER -
NOT DESIGNATED FOR PUBLICATION

**REVIEW DEPARTMENT OF
THE STATE BAR COURT**

**FILED
SEP 19 2008
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

In the Matter of

RICHARD ISAAC FINE

A Member of the State Bar.

04-O-14366

OPINION AND ORDER

Respondent Richard Isaac Fine appeals a hearing judge's decision finding him culpable of committing 16 violations involving moral turpitude in multiple civil proceedings. Citing respondent's "pattern of deliberately and repeatedly misusing this state's statutory process for challenging a judicial officer's qualifications" followed by a "campaign" of repeatedly filing meritless lawsuits in federal court, the hearing judge recommended respondent's disbarment and ordered that he be involuntarily enrolled as an inactive member of the State Bar of California in accordance with the provisions of Business and Professions Code section 6007, subdivision (c)(4). Respondent attacks the

legal sufficiency of the culpability findings and raises several constitutional claims for the first time on appeal. The State Bar urges us to affirm the hearing judge's findings and recommendation.

Following our independent review (Cal. Rules of Court, rule 9.12), we find that the hearing judge has fairly and fully reviewed the testimonial and documentary evidence, and rendered the appropriate findings. Although we reverse the culpability determinations on certain counts and find culpability on others the hearing judge dismissed, these modifications do not impact our ultimate recommendation. In addition to respondent's pattern of misconduct over about a three-year period, his misleading and dishonest statements in his pleadings are a common theme throughout this proceeding. Based on the overwhelming evidence of respondent's repeated abuse of the judicial process, we agree with the hearing judge that disbarment is the only appropriate discipline recommendation.

I. DISCUSSION

The hearing judge's 68-page decision is a fair and objective rendition of the voluminous evidence in this case, and we adopt those findings. It is unnecessary to recount them or the underlying evidence. Instead, we focus our opinion on the hearing judge's culpability determinations and the essence of respondent's claims on review.

A. Respondent's Procedural and Constitutional Claims

We first address the numerous procedural and constitutional claims respondent raises on review.[1] He raises several of those claims for the first time on review, including claims under California's litigation privilege and California's anti-strategic lawsuit against public participation (anti-SLAPP) statute. These claims have been waived due to respondent's failure to raise them in the proceedings below. *(Dimmick v. Dimmick* (1962) 58 Cal.2d 417, 422-423 [points not raised in trial court will not be considered on appeal]; *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483,491 [attorney waived alleged error on appeal when he failed to allege in his brief with supporting references to the record that he presented constitutional issue of due process to hearing judge and obtained ruling on it].)

1. *Jurisdiction of the State Bar Court*

Respondent contends the State Bar Court is without jurisdiction to consider the charges alleged in the Notice of Disciplinary Charges (NDC) because they were filed in violation of rule 261 of the Rules of Procedure of the State Bar. We disagree.

On February 2, 2004, the hearing judge filed an order dismissing without prejudice Case No. 00-0-10175 after the State Bar filed a motion to dismiss the matter

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[1] Those claims not specifically addressed herein are deemed meritless and rejected.

in furtherance of justice. (Rules Proc. of State Bar, rule 262(e)(1).) On February 6, 2006, the State Bar filed the present NDC, stating it was based in part on the same transaction or occurrence as the matter previously dismissed. Under such circumstances, "Leave of the Court must be obtained.., before.., a new proceeding [may be] commenced based on the same transaction or occurrence, if more than two (2) years have elapsed since the effective date of the dismissa"l (..R..ules Proc. of State Bar, rule 261(c).) Respondent contends the effective date of the dismissal of Case No. 00-O-10175 was February 2, 2004, and that the State Bar was required to obtain leave of court before filing the NDC on February 6, 2006.

Contrary to respondent's assertion, the effective date of the dismissal of Case No. 00-O-10175 was March 9, 2004, upon expiration of the period for filing a petition to review or to reverse or modify the dismissal order. (Bus. & Prof. Code, § 6084, subd. (a) [order of State Bar Court shall be final and enforceable when no petition to review or to reverse or modify has been filed by either party within time allowed therefor]; Rules Proc. of State Bar, rule 301 (a)(1) [requests for review of orders by hearing judges which fully dispose of entire proceeding shall be filed within thirty days after service]; Rules Proc. of State Bar, rule 63(a) and Code Civ. Proc., § 1013, subd. (a) [duty to act within specified period shall be extended by five calendar days upon service by mail].) Thus, we see no impropriety in the filing of the current NDC.

2. *Statute of Limitations*

We reject respondent's argument that factual allegations in the NDC predating February 6, 2002, should be stricken since they stem from a time-barred complainant. Rule 51 (a) of the Rules of Procedure of the State Bar provides: "A disciplinary proceeding based *solely* on a complainant's allegation of a violation of the State Bar Act or rules of Professional Conduct shall be initiated within five years from the date of the alleged violation." (Italics added.) Since the record reflects that this disciplinary proceeding is the result of an independent State Bar investigation based on court documents and published opinions, we agree with the hearing judge's determination that this limitations period is inapplicable to these proceedings and adopt his findings explained in footnote two of his decision. However, even if respondent had sufficiently proved that the NDC was based on the allegations of a time-barred complainant, his violations were a continuing offense throughout the five-year period and thus fall within the exception stated in rule 51 (b) of the Rules of Procedure of the State Bar.

3. *Denial of Due Process*

We also reject respondent's argument that he was denied due process because he was denied adequate notice of the charges, denied exculpatory evidence by the State Bar's refusal to, disclose the identity of an alleged complaining party and an alleged complaint in September 2004, and denied the opportunity to examine or cross-examine witnesses. Respondent neither stated with adequate specificity the basis for his

claimed denial of due process nor articulated any particular prejudice he suffered as a result.

Our review of the NDC reveals that each charge adequately specifies how the conduct at issue violates section 6106. *(In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 614 [the requirements of due process are met when the notice of disciplinary charges specifies the conduct at issue and the rule charged].) Respondent failed to state how the State Bar's refusal to disclose an alleged complaint and complaining witness was exculpatory and how he suffered any prejudice by its nondisclosure. Finally, respondent failed to even specify which witnesses he was denied the right to examine or cross-examine. Because respondent fails to identify sufficient facts or evidence supporting his contentions, we reject them as speculative and conclusory.

Similarly, we reject respondent's claim that. he was denied discovery. Although he claims the hearing judge inappropriately denied him the opportunity to demand discovery when the judge ruled on a pending motion to dismiss after the discovery cut-off date, respondent fails to state how a pending motion to dismiss in any way prevented him from either propounding discovery or filing any motions to compel in the event discovery sought was not provided.

4. *Respondent's Contention that State Bar Court Judges Should Be Disqualified*

Respondent argues that because State Bar Court judges were defendants in *Canatella v. State of*

California (9th Cir. 2002) 304 F.3d 843 *(Canatella I)* and *Canatella v. Stovitz* (9th Cir. Dec. 6, 2006, No. 05-15447) 213 Fed.Appx. 515, 2006 WL 3500000 *(Canatella II)*, along with the Board of Governors of the State Bar and the Office of the Chief Trial Counsel of the State Bar, their joint defense "manifests ex parte communications and an agreement" to disregard the First Amendment.[2] Respondent insists that this alleged agreement disqualifies any State Bar Court judge from participating in this case.

Respondent does not identify with particularity a specific regulatory provision or legal doctrine that would justify the disqualification of every State Bar Court judge from hearing this matter. Although rule 106(a) of the Rules of Procedure of the State Bar provides that "A judge shall be disqualified if he or she is subject to disqualification under Code of Civil Procedure section 170.1," we decline to fill the void in

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[2] The plaintiff in the *Canatella* cases had been assessed sanctions by federal and state courts, totaling approximately $100,000, for vexatious litigation, filing frivolous actions and appeals, and use of delay tactics. After the State Bar initiated a disciplinary investigation, the plaintiff filed a title 42 United States Code section 1983 lawsuit against the State Bar raising First and Fourteenth Amendment challenges to various disciplinary provisions, including section 6106, and requesting the provisions be declared facially unconstitutional. Although the appellate court in *Canatella I* remanded the case to the district court stating that the plaintiff had standing and that his claims were ripe for review, it subsequently found that the district court did not abuse its discretion in dismissing the complaint without leave to amend based on the plaintiff's failure to state a claim. *(Canatella II, supra,* at pp. 517-518.)

respondent's arguments and reject as unsupported his claim that wholesale disqualification of every State Bar Court judge is warranted.

Similarly, respondent contends he was denied due process because the State Bar and State Bar Court have a "predetermined disposition" to disregard the First Amendment in light of the fact tha~ they were defendants in *Canatella I* and *Canatella II*. Respondent failed to provide supporting references to the record showing that he presented to the hearing judge the separate due process issue he now raises on appeal, and we have found none. (Rules Proc. of State Bar, rule 302(a).) Nonetheless, the decisions in *Canatella I and Canatella II* do not support respondent's contention that State Bar Court judges are predisposed to disregard the First Amendment. Nor do they support his argument that the Ninth Circuit found section 6106 violates the protections of the First Amendment. Such assertion by respondent is unreasonable and not made in good faith. Accordingly, we also reject as meritless respondent's argument that section 6106, facially and as applied by the State Bar Court, violates the First Amendment of the U.S. Constitution. (See, e.g., *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23, 30 [disciplinary rules cannot punish activity protected by First Amendment, but neither false statements made knowingly nor false statement made with reckless disregard of the truth enjoys constitutional protection].)

5. *Constitutionality of Section 6007, Subdivision (c)(4)*

Respondent contends that his involuntary inactive enrollment under the provisions of Business arid Professions Code section 6007, subdivision (c)(4), was unconstitutional due to lack of procedural due process. Section 6007, subdivision (c)(4), provides: "The board shall order the involuntary inactive enrollment of an attorney upon the filing of a recommendation of disbarment after hearing or default." Rule 220(c) of the Rules of Procedure of the State Bar states: "If the Court recommends disbarment, it shall also include in its decision an order that the respondent be enrolled as an inactive member pursuant to Business and Professions Code [section] 6007, subdivision (c)(4). The order of inactive enrollment shall be effective upon personal service or three (3) days after service by mail" ....

The thrust of respondent's claim is that he was not adequately notified that the outcome of his disciplinary hearing could result in his inactive enrollment. We find no merit to respondent's argument. He was on constructive notice of the statutes cited above, and the NDC filed and served on February 6, 2006, provided actual notice to respondent of the possibility that he may. be involuntarily enrolled as an inactive member pursuant to Business and Professions Code section 6007, subdivision (c), by the hearing judge if his conduct posed a substantial threat of harm to the interest of his clients or the public.

B. Findings and Culpability

Respondent's extensive misconduct started with a class action lawsuit in the Los Angeles 'County Superior Court (the *DiFlores* matter) in which respondent represented a majority of the plaintiffs. After the commissioner in that case ruled against respondent on a request for attorney fees, respondent began a pattern of deliberately misusing the process for challenging a judicial official. Even after respondent was repeatedly warned and sanctioned for his abusive behavior in state court, respondent continued his tactics in the federal courts where he repeatedly filed meritless lawsuits against judicial officers. This proceeding focuses on respondent's misconduct in five cases: *DiFlores, Shinkle, Lewin, Silva and Mitchell.* We find that the hearing judge has fairly and fully reviewed the testimonial and documentary evidence, and we adopt the hearing judge's findings as summarized below.

1. *Findings*

a) *DiFlores v. EHG*

In May 1996, respondent filed a class action lawsuit alleging tort causes of action arising from medical examinations conducted by an imposter doctor (the *DiFlores* matter). After the case settled in 1999, respondent filed a motion requesting $1.4 million as partial payment for attorney fees and costs he claimed he incurred as class counsel. As a result of his dissatisfaction with Commissioner Bruce E. Mitchell's rulings regarding the distribution of attorney fees, respondent filed *twelve* Code of Civil Procedure section

170.3 challenges (section 170.3challenges) against the commissioner over a three-year period between 1999 and 2002. Every challenge in this matter was either denied by an out-of-county judge assigned by the Judicial Council, or stricken for failing to state a legal basis for disqualification. For those challenges where respondent sought appellate review, relief was denied.

Commissioner Mitchell repeatedly warned respondent that his filing of numerous applications for advance attorney fees, in defiance of the court's order not to do so, constituted unprofessional conduct and could result in sanctions for contempt. Despite these warnings, respondent continued his behavior unabated. In March 2000, after a $5,000 sanction order, the commissioner removed respondent as class counsel in the *DiFlores* matter due to his unprofessional behavior. His removal, however, did not affect respondent's representation of 19 class members who had separately retained respondent before he was certified as class counsel.

Respondent's appeal of the removal order was dismissed for lack of jurisdiction since there was no showing of harm to the plaintiffs.

Two months later, at a status conference on December 10, 2000, Commissioner Mitchell noted that respondent's appeal of the removal order had been dismissed and he admonished respondent that it was inappropriate to attempt to advocate on behalf of clients from whose representation he had been removed. Respondent filed another appeal based on a minute order from the December 10, 2000, status conference,

arguing the order improperly removed him as counsel in the case. The appellate court found respondent's argument "totally without merit" and a clear attempt to "re-litigate the removal of [respondent] in March 2000 under the guise of seeking review" of a subsequent order. Finding no appealable orders before it, the appellate court dismissed the appeal again for lack of jurisdiction.

The sanction orders imposed by Commissioner Mitchell failed to curb respondent's unprofessional behavior. Between June 2000 and June 2001, respondent filed seven more section 170.3 challenges against Commissioner Mitchell, all of which were stricken or denied. After respondent filed his ninth challenge in August 2001, the commissioner issued an order and judgment of contempt against respondent, sentencing him to the maximum allowable punishment of five days in jail.

The Court of Appeal denied respondent's petition to annul the contempt order expressly finding that respondent's ninth "statement of disqualification was filed for the improper purpose of delaying the proceedings below." *(Fine v. Superior Court* (2002)97 Cal.App.4th 651,674.)

The Court of Appeal further held that respondent's section 170.3 challenge was contemptuous because he falsely alleged that the commissioner unlawfully delayed the case, improperly solicited and offered to pay liaison counsel from the class action settlement fund, improperly interfered with the attorney-client relations of respondent, and improperly refused to sanction other

attorneys in the case. The Court of Appeal viewed respondent's conduct as "a groundless attack upon the integrity of a judicial officer" *(id.* at p. 671) and expressly found that respondent's first eight challenges were meritless. *(Id.* at p. 674.)[3]

Undeterred by the appellate court's opinion, respondent filed two more section 170.3 challenges in the *DiFlores* matter and again falsely alleged that Commissioner Mitchell used settlement fund monies "to advance a personal vendetta against [respondent]... [¶] ¯.. [¶]... [and] spread 'venom' in court papers ."... .This conduct prompted Commissioner Mitchell to remove

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[3] After the Supreme Court denied review *of Fine v. Superior Court* in May 2002, respondent filed a petition for habeas corpus in federal district court. In August 2002, the federal court issued an order to show cause why respondent's petition should not be granted based on procedural deficiencies in the contempt process. Although Commissioner Mitchell ultimately voided and annulled the underlying contempt order, respondent's demand that *Fine v. Superior Court* be depublished was rejected and the Supreme Court has not ordered that the published opinion be decertified. (Cal. Rules of Court, rule 8.1105.) Thus, we may rely on the published opinion as precedent. (Cal. Rules of Court, rule 8.1115.) More importantly, for the purposes of discipline, we consider evidence of the conduct that led to the contempt proceeding in determining whether respondent committed misconduct, not merely the issue of whether respondent was held in contempt. (See, e.g., *In re Langford* (1966) 64 Cal.2d 489, 496 [dismissed and pending criminal charges, in addition to underlying conviction, can be considered in disciplinary proceedings]; *In the Matter of Cart* (Review De0pt. 1992) 2 Cal. State Bar Ct. Rptr. 108, 117 [for disciplinary purposes it is appropriate to consider dismissed criminal charges as well as the charges for which attorney was actually convicted].)

respondent as counsel for any remaining class members, observing that over a two-and-one-half year period, despite numerous court warnings, the imposition of sanctions and a jail sentence, respondent continued to obstruct litigation in the case by failing to follow the law, tell the truth or obey court orders.

In October 2002, despite his complete removal from the *DiFlores* matter, respondent filed a twelfth section 170.3 challenge against Commissioner Mitchell that resulted in contempt proceedings before Judge Czulegar, an independently assigned judge. Judge Czulegar found beyond a reasonable doubt that respondent was guilty of contempt and sentenced him to three days in jail for filing a "declaration in support of the twelfth disqualification motion against [Commissioner Mitchell that] (1) contained false statements which were made with knowledge of their falsity or a disregard for their truth; and (2) impugned the integrity of [the commissioner] without a factual basis." Judge Czulegar also concluded that respondent "filed his twelfth disqualification motion for the improper purposes of removing a duly assigned judicial officer without just cause.., and delaying [the] proceeding." TheCalifornia Court of Appeal summarily denied respondent's petition for writ of habeas corpus challenging the contempt order, and the Supreme Court denied respondent's request for review.

b) *Shinkle v. City of Los Angeles*

Respondent continued his conduct of filing frivolous section 170.3 challenges in a different class action lawsuit over which Commissioner Mitchell also

presided. The action was for damages and injunctive relief for the alleged denial of the plaintiffs' equal protection of the laws based upon the collection of sewer service charges by the City of Los Angeles (the *Shinkle* matter). In July 1999, Commissioner Mitchell denied class certification in the *Shinkle* matter and transferred the case to the individual calendar with Judge Horowitz presiding. After Commissioner Mitchell denied respondent's motion for reconsideration of class certification and stated that he was inclined to sanction him for filing a baseless motion, respondent filed a section 170.3 challenge against the commissioner in December 1999. In the challenge, respondent accused Commissioner Mitchell of, among other things, becoming personally embroiled with respondent; falsifying court records in the *DiFlores* matter; altering the docket sheet to reflect an earlier filing of court documents; and engaging in improper ex parte communications with counsel in the *DiFlores* case. After independently assigned Judge Horn rejected his challenges,[4] respondent sought appellate review and, as discussed below in greater detail, attempted to mislead that court when he falsely contended that Judge Horn determined that Commissioner Mitchell was not impartial. The appellate court summarily denied respondent's petition for review. Commissioner Mitchell ultimately imposed $25,575 in sanctions

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[4] Four other similar section 170.3 challenges filed by respondent against Commissioner Mitchell were consolidated and assigned to Judge Horn for a ruling: *Debbs v. Department of Veterans Affairs; McCormick v. Reddi Brake; Churchfield v. Pete Wilson; and ProfessionalServices v. Sony Corporation.*

against respondent for filing the baseless reconsideration motion.

On June 5, 2000, less than two weeks after Judge Horn's order denying his first challenge in the *Shinkle* matter, respondent filed a second section 170.3 challenge against Commissioner Mitchell.[5] Respondent knew the commissioner was no longer the assigned judge in the matter at the time he filed his second challenge. Nearly one year had elapsed since Commissioner Mitchell had denied class certification and ordered the case transferred to Judge Horowitz. In fact, a summary judgment motion was pending in the matter before Judge Horowitz, which he subsequently granted. Commissioner Mitchell responded to the challenge, as in the past, by striking it and answering it in the alternative. The appellate court summarily denied respondent's petition for writ of mandate regarding this second challenge.

On July 24, 2000, respondent filed yet another appeal, challenging Judge Horowitz's orders granting summary judgment and discovery sanctions, and challenging Commissioner Mitchell's earlier orders denying class certification, denying reconsideration, and imposing $25,575 in sanctions. On December 11, 2000, while the appeal was pending, respondent also filed a petition for a "writ of supersedeas or other appropriate stay order" to prevent respondent's debtor's

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[5] On June 5, 2000, respondent also filed the second section 170.3 challenge in *DiFlores*, and challenges in the four other cases previously sent to Judge Horn for review. (See footnote 4.)

examination and to prevent the defendant from collecting the sanctions imposed against respondent. The Court of Appeal denied respondent's writ two days later, and on June 12, 2001, filed an unpublished opinion affirming the judgment and orders below and denying respondent's appeal. The Supreme Court denied respondent's petition for review.

c) The *Lewin* Matter

In 1994, respondent represented a union in a lawsuit against Los Angeles County, alleging that the county improperly commingled county monies. Judge Lewin presided over the case. After Judge Lewin ruled in favor of respondent's client, respondent sought attorney fees and costs in the amount of $1.5 million. In October 1999, the judge denied the request for fees and costs for multiple reasons, and there began respondent's next crhsade against the judicial process.

Respondent first filed a section 170.3 challenge, which Judge Lewin struck as meritless. Respondent appealed, and in February 2001, the appellate court upheld Judge Lewin's denial of attorney fees and costs, and also held that the record did not establish that Judge Lewin was biased.

In March 2002, respondent filed the first of three civil rights lawsuits in federal district court. In the first one, he sought $1.5 million in damages and orders requiring the Superior Court and the Court of Appeal to void the enforcement of their decisions denying attorney fees and costs. Respondent alleged that the defendants deprived the plaintiffs of property interests,

access to the courts and constitutional protections such as due process and equal protection. Respondent also falsely alleged that Judge Lewin improperly denied recovery of attorney fees and costs due to the plaintiff's status as a union.

In May 2002, the federal district court ordered the matter dismissed without leave to amend, stating "[t]he Supreme Court has explained that a district court may not consider constitutional claims if they are 'inextricably intertwined' with the state court's decision in a particular case. [Citation.]" *(Los Angeles County Ass'n. of Environmental Health Specialists v. Lewin* (C.D.Cal. 2002) 215 F. Supp.2d 1071, 1075.) The district court further explained how the constitutional claims presented in the complaint were not only barred because they could have been raised in state court, but also because they were "'inextricably intertwined' with the state court's decision to deny attorney's fees." *(Ibid.)*

Although the district court articulated in great detail respondent's inability to cure the jurisdictional defects that formed the bases for granting the defendants' motions to dismiss, respondent ignored the court's order dismissing the complaint with prejudice and sought to file an amended complaint in the matter. This complaint was not only meritless, but also included as defendants additional judicial officers who had previously ruled against him in other unrelated matters in a transparent attempt to further harass them. The district court, on its own motion, struck respondent's motion for leave to amend.

d) *Silva v. County of Los Angeles*

In 1999, respondent represented John Silva in a lawsuit alleging that the Los Angeles County District Attorney was mishandling undistributed child support collections. The trial judge, James Chalfant, determined that the district attorney's actions in handling the collections were legal and did not amount to waste. After unsuccessfully appealing the case, in June 2002, respondent filed his second lawsuit in federal district court (the *Silva* matter), naming as defendants Los Angeles County, the trial and appellate judicial officers involved in the state court proceedings, and Commissioner Mitchell. This lawsuit was filed two months after the district court dismissed with prejudice the *Lewin* federal case.

Dismissing the matter with prejudice, the federal district court observed that the complaint "is essentially a duplicate of the proposed amended complaint in *[Lewin]*." *(Silva v. County of Los Angeles* (C.D.Cal. 2002) 215 F. Supp.2d 1079, 1080, fn. 1 .) Because respondent knew the legal theory in the *Lewin* matter was without merit, the district court concluded that respondent's filing of the federal civil rights complaint in the *Silva* matter was nothing more than an improper attempt to circumvent the dismissal with prejudice of the *Lewin* matter.

Furthermore, because this was the second time respondent used the same legal theory "to file an ill-conceived and meritless complaint against state judges who have ruled against his client or him in state court proceedings" *(id.* at p. 1088, fn. 1 .), the court suggested

that respondent's motivation was "to punish judges who have ruled against him." *(Ibid.)* The court dismissed the complaint, determining that the plaintiff failed to establish standing *(id.* at pp. 1084-1086) and failed to establish "that the judges have a pecuniary interest, direct or otherwise, in the outcome of cases in which the County is a party." *(Id.* at p. 1088.)

e) Fine v. Mitchell

After Judge Czuleger found respondent guilty of contempt in September 2003 for including falsehoods in his twelfth section 170.3 challenge against Commissioner Mitchell in the *DiFlores* matter, respondent unsuccessfully filed state habeas petitions. Thereafter, in October 2003, respondent once again sought relief in federal court and filed a verified complaint on his own behalf seeking injunctive relief against Commissioner Mitchell, Judge Czuleger, the presiding judge of the Los Angeles County Superior Court, the appellate justices involved in respondent's contempt appeal, and the clerks of the Los Angeles County Superior Court and the Court of Appeal, Second Appellate District (the *Mitchell* matter). Respondent alleged that his right to due process and equal protection under the U.S. Constitution was violated when the judges and justices failed to: 1) remove Commissioner Mitchell from the *DiFlores* case; 2) annul Judge Czuleger's contempt order; 3) depublish certain appellate opinions involving respondent; and 4) annul certain other orders.

Although the district court orders dismissing the *Lewin* and *Silva* matters made clear to respondent that

it was inappropriate to use the federal district courts as a court of review to reverse state court judgments adverse to him, respondent filed this third federal lawsuit seeking the same relief denied to him in both the *Lev~in* and *Silva* matters - i.e., an order from the federal district court directing the state courts to undo their prior orders adverse to respondent. The federal court dismissed the complaint under the *Rooker-Feldman* doctrine. (See *D.C. Court of Appeals v. Feldman* (1983) 460 U.S. 462, 483, fn. 16.)

2. *Culpability*

Acts of moral turpitude are those done contrary to honesty and good morals. *(Kitsis v. State Bar* (1979) 23 Cal.3d 857, 865.) The pursuit of a frivolous action or proceeding can constitute an act of moral turpitude in violation of section 6106. (See *In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446, 454.) Even if individual acts do not involve moral turpitude, a pattern of misconduct may amount to moral turpitude. *(In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1, 14.)

Although unfettered access to the courts is an important policy *(Lubetzky v. State Bar* (1991) 54 Cal.3d 308, 317), this does not entitle an attorney to file baseless or vexatious litigation. Abuse of the judicial system in this manner is disciplinable particularly when there is a finding that an attorney files cases frivolously or in bad faith or where sanctions are imposed 'due to meritless litigation. (See generally *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576 [attorney's conduct in filing bankruptcy petition

was not reasonable or taken in good faith in light of bankruptcy court's imposition of sanctions against attorney for filing frivolous petition]; *In the Matter of Scott, supra,* 4 Cal. State Bar Ct. Rptr. 446 [attorney disciplined after trial court awarded sanctions against attorney for having filed and pursued frivolous lawsuit in bad faith]; *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112 [attorney found culpable of ethical misconduct after court of appeal sanctioned attorney for filing frivolous appeal in one matter and superior court sanctioned attorney for filing frivolous complaint for improper purpose of harassment in separate matter].)

We find that respondent committed multiple acts of moral turpitude in violation of section 6106 by filing numerous frivolous section 170.3 challenges and frivolous federal actions for the improper purposes of pursuing his personal interests before those of his clients, deliberately delaying proceedings and harassing judges who ruled against him. In addition, we find respondent culpable of violations of section 6106 based on his misrepresentations in various pleadings. Although we reverse the hearing judge's culpability determinations on certain counts, we readily reject respondent's contention that the State Bar failed to clearly and convincingly prove any of the charges. In sum, we find that respondent committed acts of moral turpitude in each of the five matters, constituting a total of 16 violations of section 6106.[6]

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[6] To the extent the facts underlying multiple violations are the same, we give no additional weight to the duplication in

a) The *DiFlores* Matter (Counts 1-5)

Count 1: Over approximately a three-year period, respondent filed twelve section 170.3 challenges against Commissioner Mitchell in the *DiFlores* matter. As discussed *ante,* respondent's challenges were invariably determined to be meritless, contemptuous and filed for improper purposes. In each instance where respondent was adjudged guilty of contempt, he was found to have made multiple false allegations of misconduct against Commissioner Mitchell in his section 170.3 challenges. Under the circumstances, we agree with the hearing judge that respondent breached his fiduciary duty as an officer of the court and his obligation to his clients, and committed acts involving moral turpitude by filing 11 frivolous section 170.3 challenges after his first challenge was struck and found to be without merit. Respondent was clearly motivated by his personal interest in recovering attorney fees, and his actions caused unnecessary delay in the processing, determination and payment of his clients' claims.

Counts 2 and 4: Counts 2 and 4 are based on the seventh section 170.3 challenge, wherein respondent alleged that Commissioner Mitchell misappropriated settlement funds in the *DiFlores* matter. Specifically, count 2 alleges that the seventh challenge was frivolous

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determining discipline. *(In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr: 430.) Thus, as set forth below, we dismiss with prejudice five counts as duplicate of other charges. *(In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498.)

because it was brought without any factual basis to support the allegation of theft and it was filed for the purpose of harassment. Although that challenge was meritless, as discussed above, it is part of respondent's overall misconduct of repeatedly filing frivolous section 170.3 challenges for improper purposes. The facts in count 2 are not separate and apart from those used to support a finding of culpability under count 1, and thus, we dismiss count 2 with prejudice as duplicative of count 1.

In count 4, the State Bar alleged that respondent violated section 6106 by filing the seventh challenge falsely alleging that Commissioner Mitchell misappropriated settlement funds when respondent knew or was grossly negligent in not knowing that the statement was false. Contrary to the hearing judge's conclusion, we find that the record amply establishes the falsity of respondent's allegation of misappropriation.

Respondent alleged that in a minute order Commissioner Mitchell %olicits other counsel to advocate Commissioner Mitchell's position in the appeal.., by offering them compensation from the Settlement Fund .."... Based on his clearly erroneous interpretation of the order, respondent contended in his seventh challenge that "Commissioner Mitchell has misappropriated [sic] the Settlement Fund monies to pay for his defense in the appeal." Because Commissioner Mitchell merely suggested that a response to the appeal was appropriate and that the responding party may be entitled to attorney fees, the Court of Appeal concluded

that his allegations regarding Commissioner Mitchell's handling of the settlement fund were false. *(Fine v. Superior Court, supra,* 97 Cal.App.4th at p. 670.) Based on our independent review of the record, we agree with this finding, and we conclude that respondent committed an act involving moral turpitude in violation of section 6106 as charged in count 4 by knowingly misrepresenting that Commissioner Mitchell misappropriated settlement funds.

Count 3: Respondent's tenth section 170.3 challenge alleged that a federal lawsuit filed by respondent (the *Lewin* matter) compelled the commissioner's disqualification. Commissioner Mitchell was not named in the *Lewin* lawsuit nor was he involved in the matter in any way. The hearing judge found that respondent violated section 6106 by filing a tenth section 170.3 challenge that was frivolous and for the improper purpose of harassing Commissioner Mitchell. Although we agree that respondent's tenth challenge was frivolous and filed for improper purposes, the same facts are used to support a finding of culpability under count 1, and thus, we dismiss count 3 with prejudice as duplicative.

Count 5: We agree with the hearing judge that respondent violated section 6106 when he filed a frivolous appeal following the December 1, 2000, status conference in the *DiFlores* matter. On appeal, respondent claimed that Commissioner Mitchell had removed him as counsel for the settlement class at the status conference. As found by the Court of Appeal, respondent's contention was "totally without merit" and

merely an attempt to inappropriately "re-litigate" his earlier removal. He had already appealed the removal order and lost. Respondent's misrepresentation of an order in an attempt to re-litigate a previously denied issue is clearly a dishonest act in violation of section 6106.

b) The *Shinkle* Matter (Counts 6-14)

The State Bar charged respondent with nine separate counts of moral turpitude based on his misconduct in the *Shinkle* matter. As in the *DiFlores* matter, the charges focus on respondent's improper litigation tactics, including pursuing frivolous judicial challenges, attempting to mislead an appellate court, and bringing frivolous writs and appeals.

Count 6: When respondent filed his second section 170.3 challenge against Commissioner Mitchell in the *Shinkle* matter in June 2000, nearly one year had elapsed since the commissioner had denied class certification and ordered the case transferred to Judge Horowitz in July 1999. During his disciplinary trial, respondent acknowledged that after the transfer, the commissioner was no longer a temporary judge in the case and it was being litigated before Judge Horowitz. When the hearing judge asked respondent whether he accidentally filed the second section 170.3 challenge in this matter, respondent answered, "No." Since respondent knew Commissioner Mitchell was no longer the temporary judge in the matter, respondent's intentional filing of the second section 170.3 challenge served no purpose other than to harass Commissioner Mitchell and unnecessarily consume court resources.

Under these circumstances, we agree with the hearing judge that respondent committed an act of moral turpitude in violation of section 6106.

Counts 7, 8 and 9.: Counts 7, 8 and 9 involve the June 12, 2000, petition for a writ of mandate respondent filed to seek Commissioner Mitchell's disqualification after Judge Horn denied respondent's first challenge. The State Bar alleges that respondent sought to mislead the appellate court by failing to disclose contravening legal authority (count 7) and by failing to inform the appellate court that the language of Judge Horn's order that respondent was relying 'on for his appeal had been subsequently modified by Judge Horn (counts 8 and 9). We agree with the hearing judge's findings of culpability on counts 8 and 9, but reverse his finding of culpability on count 7 and dismiss that count with prejudice.

As to counts 8 and 9, as previously discussed, respondent's first section 170.3 challenge was denied by Judge Horn because respondent failed "to present sufficient facts that support a finding that Commissioner Mitchell be disqualified." However, in certain statements within his order, Judge Horn inadvertently indicated that Commissioner Mitchell was not impartial. Recognizing these errors, the defendant moved for a corrected order, which respondent opposed on June 8, 2000. Judge Horn subsequently filed a correction order on June 16, 2000, clarifying that he intended to state that Commissioner Mitchell was impartial and filed a new order nunc pro tunc omitting the typographical errors.

In his June 12, 2000, petition to the appellate court seeking review of Judge Horn's denial of the challenge to Commissioner Mitchell, respondent stated that Judge Horn held "In Shinkle Commissioner Mitchell was not impartial when Mr. Fine submitted an opposition to the motion for sanctions on the day of the hearing," and "Further Commissioner Mitchell was not impartial when he heard the Motion for Sanctions after he decided to deny the motion for reconsideration." Respondent neither advised the appellate court that there was a pending motion to correct the language nor subsequently that the order was modified.

The State Bar alleged in counts 8 and 9 that each of respondent's contentions constituted a separate violation of section 6106 based on his attempt to mislead the appellate court. The hearing judge combined the allegations of these two counts and concluded that respondent violated section 6106. After our independent review, we see no reason to disturb the hearing judge's decision to consolidate these two counts or his culpability finding.. We agree with the hearing judge's finding that "In reading Judge Horn's order, there can be no reasonable confusion as to the fact that he had made a typographical error when he stated that Commissioner Mitchell was 'not impartial.'"

As for count 7, the hearing judge found that respondent also attempted to mislead the appellate court with his contention that the sanction order imposed by Commissioner Mitchell was improper pursuant to Code of Civil Procedure section 170.4, subdivision (d), because respondent intentionally failed

to disclose contravening legal authority, specifically Code of Civil Procedure section 170.4, subdivision (c)(1).[7] We disagree.

On December 17, 1999, nine days after respondent filed his first section 170.3 challenge, Commissioner Mitchell conducted a continued hearing on the sanctions motion. After completion of oral argument, Commissioner Mitchell stated "The matter is submitted. I appreciate your arguments. The tentative will be the order." Although it could be argued the hearing commenced on September 9, 1999, when the defendant filed its sanctions motion for decision before Commissioner Mitchell (see, e.g., *Eckert v. Superior Court (1999)* 69 Cal.App.4th 262, 266), in light of Commissioner Mitchell's comments, we do not find it unreasonable, let alone intentionally misleading, for respondent to advocate that the sanctions motion was not submitted for decision until December 17, 1999, well after he filed his first section 170.3 challenge in the case on December 8, 1999. On this record, we cannot conclude that respondent sought to mislead the appellate court by arguing that Code of Civil Procedure section 170.4, subdivision (d), precluded Commissioner Mitchell from ruling on the sanctions motion or b

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[7] While Code of Civil Procedure section 170.4, subdivision (d), generally precludes a judge from acting in a proceeding until the question of disqualification has been determined, subdivision (c)(1) provides that "[i]f a statement of disqualification is filed after.., the submission of a motion for decision, the judge whose impartiality has been questioned may order the trial or hearing to continue, notwithstanding the filing of the statement of disqualification."

omitting to cite to subdivision (c)(1). Therefore, we reverse the hearing judge's finding of culpability on this count and dismiss it with prejudice.

Count 10: The State Bar alleges in count 10 that respondent violated section 6106 when he "knowingly includ[ed] a challenge to the striking of a statement of disqualification against Commissioner Mitchell in [the June 12, 2000,] Petition for Writ of Mandate when Commissioner Mitchell had no further involvement in the case" W....hen the hearing judge asked the State Bar to identify the allegedly disciplinable statement, the State Bar referred to respondent's statement that "Petitioner seeks a Writ of Mandate or other appropriate relief requiring Judge Frederick P. Horn, of the Orange County Superior Court to disqualify Commissioner Bruce B. Mitchell in the aforementioned [Shinkle] case[]." We disagree with the hearing judge's conclusion that the State Bar met its burden of proving that respondent committed an act involving moral turpitude as alleged in this count.

In filing his petition for writ of mandate, respondent sought a reversal of Judge Horn's denial of respondent's first section 170.3 challenge in the *Shinkle* matter. Had respondent's section 170.3 challenge been upheld, Commissioner Mitchell's order imposing sanctions of $25,575 could have been vacated. (Code Civ. Proc., § 170.4, subd. (c)(1) [if it is determined a judge is disqualified, all orders and rulings of the judge made after the filing of the statement of disqualification shall be vacated].) Under these circumstances, the record does not compel the conclusion that respondent's

petition was frivolous or filed for an improper purpose simply because Commissioner Mitchell was no longer the judge in the *Shinkle* matter when he filed the petition. Therefore, we reverse the hearing judge's finding of culpability on this count and dismiss it with prejudice.

Counts 11, 12 and 13: These three counts arise out of the appeal respondent filed on July 24, 2000, and the writ he filed on December 11, 2000, after the defendant's motion for summary judgment was granted in the *Shinkle* matter. In counts 11 and 12, the hearing judge concluded that respondent violated section 6106 by filing the appeal and writ challenging the validity of Commissioner Mitchell's December 17, 1999, sanctions order when respondent knew that the time for appealing the order had "long expired." In count 13, the hearing judge concluded that respondent violated section 6106 by filing the appeal challenging the validity of Commissioner Mitchell's September 9, 1999, order denying class certification when respondent knew that the time for appealing that order had also expired. For each count, the hearing judge determined respondent filed the writ or appeal for the improper purposes of delay and harassment because respondent knew that the time for appealing either order had expired. We disagree.

Although the Court of Appeal determined that respondent's appeal of the orders denying class certification and imposing $25,575 in sanctions was untimely, it nevertheless addressed the merits of respondent's appellate arguments regarding the validity

of these orders. Furthermore, the crux of the appeal related to the summary judgment motion, not these earlier orders. Despite rejecting respondent's substantive arguments, the Court of Appeal did not conclude that respondent's contentions were frivolous or that the appeal or the writ for supersedeas-stay were filed for any improper purpose. In fact, the Court of Appeal denied the request by the City of Los Angeles to impose sanctions against respondent on appeal. Thus, we do not find there is clear and convincing evidence that respondent's appeal and writ for supersedeas-stay were frivolous or filed for the improper purpose of delay or harassment. We therefore reverse the hearing judge's findings of culpability on these three counts and dismiss them with prejudice.[8]

Count 14: The State Bar charged respondent with moral turpitude for filing frivolous section 170.3 challenges in four other civil suits where Commissioner Mitchell was the temporary judge: *Churchfield v. Wilson, Debbs v. Cal. Dept. of Veteran's Affairs, McCormick v. Reddi Brake Supply Corp.,* and *Professional Services Org. v. Sharp Electric.* Specifically, the State Bar alleges that between December 1999 and May 2001, respondent filed six section 170.3 challenges in one of the civil cases and

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[8] In dismissing certain counts, we note that the State Bar asked few, if any, questions of respondent at trial regarding the relevant allegations. Instead, the State Bar simply submitted the underlying court documents without questioning respondent as to the substance, relevance or veracity of his positions in the pleadings.

four challenges in each of the three other civil cases. The hearing judge found respondent violated section 6106 because "lain examination of the entire record reveals that respondent repeatedly filed section 170.3 challenges against Commissioner Mitchell in multiple civil actions to delay the proceedings and harass Commissioner Mitchell." We agree and uphold the finding of culpability in court 14.

c) The *Lewin* Matter (Counts 15-17)

Count 15: The hearing judge found respondent violated section 6106 because respondent filed this first federal lawsuit "knowing it was an improper attempt to have a federal court overturn a state court judgment" and to harass Judge Lewin. We disagree.

Although the district court dismissed the matter for multiple reasons, such as judicial immunity, Eleventh Amendment immunity, as well as lack of jurisdiction under the *Rooker-Feldman* doctrine, it neither decided respondent's complaint on its merits nor concluded that the complaint was frivolous or filed for any improper purpose.. In the absence of any independent finding that respondent's federal complaint was frivolous and in the absence of any imposed sanctions for filing the federal complaint, we review the record for any circumstantial evidence of respondent' s motivation *(Sorensen v. State Bar* (1991) 52 Cal.3d 1036, 1042-1043) to answer the threshold question whether respondent had an honest and reasonable belief that his cause of action was well-founded or viable. (See *In the Matter of Scott, supra,* 4 Cal. State Bar Ct. Rptr. at p. 455.)

Because respondent's complaint was not decided on its merits, on this record we cannot conclude that the complaint was based on facts he knew he could not prove. (Cf. *In the Matter of Scott, supra,* 4 Cal. State Bar Ct. Rptr. at p. 457 [a civil rights cause of action based on allegations that respondent knew he could not prove was patently frivolous and unjust].) In light of the substantial fee award respondent sought to recover, neither can we conclude that respondent was motivated by spite or vindictiveness in filing the complaint. (Cf. *Sorensen v. State Bar, supra,* 52 Cal.3d at p. 1042 [attorney's selection of the "most oppressive and financially taxing means of redress" out of proportion to the sum in controversy was circumstantial evidence that attorney was motivated in large measure by spite and vindictiveness]; *In the Matter of Scott, supra,* 4 Cal. State Bar Ct. Rptr. at p. 457 [attorney's continued pursuit of a judge based on meritless factual allegations was strong circumstantial evidence that attorney was motivated by vindictiveness].)

Given the absence of evidence indicating improper motive, we cannot conclude that respondent knowingly filed the lawsuit as an inappropriate attempt to have a federal court overturn a state court judgment. On this record, neither can we conclude that respondent filed the federal lawsuit for the improper purpose of harassing Judge Lewin. For these reasons, we reverse the culpability determination on this count and dismiss it with prejudice.

Count 16: Despite the federal district court's May 2002 order dismissing the case without leave to amend,

in June 2002 respondent filed a motion for leave to file a first amended complaint naming additional judges as defendants. We agree with the hearing judge's conclusion that by disregarding the court's directive, respondent filed the motion "with an intent to delay.., and harass the trial judge and the other individually named judicial officers" in violation of section 6106.-

Count 17: This count charges respondent with knowingly making a false statement in the federal lawsuit when he alleged that Judge Lewin did not award attorney fees and costs because the plaintiff was "an employee union." The hearing judge dismissed this count for failure of proof and the State Bar does not challenge the dismissal on appeal. However, based on our independent review of the record, we disagree with the hearing judge's decision to dismiss this count with prejudice.

Judge Lewin denied the request for fees and costs because: 1) the union was motivated primarily by self-interest in bringing the lawsuit by using it as a bargaining chip in a labor dispute; 2) the union failed to show the necessity of the lawsuit; 3) allowing recovery of fees in the case would encourage unions and labor associations to sue their governmental employers for their own purposes unrelated to the labor dispute to coerce labor concessions; and 4) the lawsuit did not confer a significant benefit on the public or a large class of persons. However, when respondent filed the federal complaint in this matter, he alleged only that "the trial court did not award attorneys fees and costs stating as its reason that [plaintiff] was an employee uni"on ....

We agree with the federal district court's conclusion that respondent mischaracterized Judge Lewin's order. (*Los Angeles County Ass 'n. of Environmental Health Specialists v. Lewin, supra,* 215 F.Supp.2d atp. 1073 fn. 1.) Since respondent knew his allegation was false and misleading, his conduct violated section 6106. We therefore reverse the hearing judge's dismissal of this count.

d) The *Silva* Matter (Counts 18-19)

In count 18, the State Bar charged respondent with violating section 6106 by knowingly filing a frivolous federal complaint with the intent to delay and harass. In count 19, the State Bar charged respondent with violating section 6106 by intentionally targeting specific judges in the *Silva* federal matter solely to harass them. The hearing judge found that respondent filed a frivolous court action to harass specific judicial officers and dismissed count 19 as duplicative of count 18. The State Bar characterizes the hearing judge's action as a consolidation and does not challenge it on review. We leave undisturbed the hearing judge's treatment of these charges and agree with his determination that the *Silva* federal complaint was frivolous and filed for the improper purpose of harassing judicial officers.

e) The *Mitchell* Matter (Counts 20-22)

Count 20: The State Bar charged respondent with violating section 6106 because he filed a frivolous action and the hearing judge agreed, finding that "respondent ... placed before a federal court a claim with absolutely no substance or merit." We agree. In filing the *Mitchell*

federal complaint, respondent continued to pursue the same claim for relief that had been twice denied him as meritless in the *Lewin* and *Silva* matters. In light of the adverse determinations in the *Lewin* and *Silva* matters, we reject respondent's claim that he had a good faith belief that he could prevail in overturning the adverse orders involved in the *Mitchell* federal complaint.

Counts 21 and 22: In these counts, the State Bar charged respondent with violations of section 6106 for naming the presiding judge of the Los Angeles County Superior Court and two court clerks as defendants in a frivolous complaint. Because the allegations were essentially identical, the hearing judge decided that "these two counts will be considered together." We agree with the hearing judge's finding of culpability on these counts, but because these allegations also support the finding of a frivolous appeal in count 20, we do not assign any additional weight to these two charges in determining discipline. *(In the Matter of Wolf* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 11.)

II. DISCIPLINE

A. Aggravation

1. *Multiple Acts*

We have found respondent culpable of numerous counts of moral turpitude in separate civil cases. Thus, we agree with the hearing judge's finding in aggravation that respondent's misconduct involves multiple acts. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(ii)

(hereinafter "standards"). We further agree with the hearing judge's finding that "Respondent's misconduct clearly establishes a pattern of misconduct in which respondent deliberately and for an extended period of time misused this state's statutory process for challenging a judicial officer's [impartiality] to decide a proceeding.., and then deliberately and repeatedly filed frivolous federal court actions against any judicial officer (including Superior Court Judges and Court of Appeal Justices) who ruled against him, in an attempt to coerce or intimidate the judicial officer into ruling in respondent's favor and to have those same judicial officers improperly removed from cases to which they had been duly assigned."

2. ***Significant Harm to Administration of Justice and Clients***

We agree with the hearing judge's conclusion that respondent's misconduct significantly harmed the administration of justice. (Std. 1.2(b)(iv).) Over approximately a three-year period, respondent filed twelve meritless section 170.3 challenges and at least three unsuccessful appeals in the *DiFlores* matter alone. Respondent's actions not only impeded the efficient administration of justice and improperly burdened the court system but also resulted in the imposition of sanctions, two separate judgments of contempt, his removal as class counsel and ultimately his removal as counsel for any class members.

Unlike the hearing judge, we find that respondent's actions also severely harmed his clients. In the *DiFlores* case in particular, each time respondent filed a section

170.3 challenge, petition or appeal, the trial court had to continue further proceedings in the matter until the court resolved the pending challenge, petition or appeal. Respondent's actions caused undue and protracted delay in processing client claims and constitute serious aggravation under standard 1.2(b)(iv).

3. *Indifference*

We agree with the hearing judge's finding that respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) Despite his removal as counsel, the imposition of sanctions against him and separate judgments of contempt, respondent steadfastly refused to acknowledge the wrongfulness of his conduct and continued to pursue frivolous motions and actions.

4. *Uncharged Misconduct*

The hearing judge found that respondent violated his duty under section 6068, subdivision (i), "To cooperate and participate in any.., disciplinary proceeding pending against himself" because respondent "repeatedly engaged in conduct and 'procedural' maneuvering in this court that evidences a scheme to delay the trial and final adjudication of the disciplinary charges in this proceeding which unnecessarily consumed the limited resources of this court."

In addition to the acts listed by the hearing judge, we also consider in aggravation respondent's repeated attempts to disqualify judges after he requested review of his disciplinary proceeding on November 19, 2007.

Although the hearing department no longer retained jurisdiction over his disciplinary matter after he requested review, respondent nevertheless filed no fewer than five motions to disqualify the trial judge in this matter and five motions to disqualify the supervising judge of the hearing department. Respondent also filed three additional motions to disqualify the remaining hearing department judges who were not involved in his disciplinary proceeding whatsoever.

Respondent extended this conduct to this review department by filing four motions to disqualify the presiding judge and six motions to disqualify the remaining review department judges. On March 24, 2008, we filed an order determining that respondent's motions for disqualification were frivolous and we warned respondent that sanctions could be imposed for future frivolous pleadings. Despite this order, respondent filed two additional motions to disqualify the presiding judge and two hearing department judges.

In addition to his post-trial conduct, we find other grounds for uncharged misconduct. Although respondent has not been authorized to practice law in California since October 17, 2007, he continues to file pleadings with this court improperly identifying himself as the "Law Offices of Richard I. Fine & Associates." Between October 19, 2007, and May 30, 2008, respondent filed no fewer than 30 pleadings with this caption. In doing so, respondent improperly held himself out as entitled to practice law in violation of sections 6106 and 6126. We consider respondent' s post-

trial misconduct in which he held himself out as entitled to practice law and in which he repeatedly filed frivolous motions to disqualify judges to constitute serious aggravating circumstances. (Std. 1.2(b)(iii).)

B. Mitigation

1. *Absence of Disciplinary. Record*

Respondent was admitted to practice law in the State of California on May 3, 1973, and his misconduct commenced in December 1999. Respondent has no prior record of discipline and we agree with the hearing judge that respondent's 26 years of practice without discipline are a significant mitigating circumstance.

2. *Community Service*

We agree with the hearing judge's conclusion that respondent's evidence of community service warrants minimal weight in mitigation since his brief and self-congratulatory testimony was the only evidence offered to substantiate such mitigation.

C. Degree of Discipline

In determining the degree of discipline to recommend, we consider the standards, which serve as guidelines, as well as prior decisions imposing discipline based on similar facts. *(In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563,580.) Since respondent's violations involve moral turpitude, standard 2.3 is most pertinent to the disciplinary analysis in this case. If a member is culpable "of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of

concealment of a material fact to a court, client or another person," standard 2.3 provides for "actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law." Given that respondent committed multiple acts involving moral turpitude, which not only significantly harmed clients and the administration of justice but also occurred while practicing law, disbarment would appear to be an appropriate sanction.

However, since the standards are recognized as guidelines, it is not mandatory for us to recommend respondent's actual suspension or disbarment. Instead, we review the analysis of the hearing judge as well as relevant case law for additional guidance in order to best achieve the purpose of disciplinary proceedings, which is to protect the public, preserve public confidence in the profession and maintain the highest possible standards for attorneys. *(Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111 .)

Appropriately, the hearing judge relied on *In the Matter of Varakin* (Review Dept. 1994)3 Cal. State Bar Ct. Rptr 179 in reaching his disciplinary recommendation. Over a 12-year period, the attorney in *Varakin* repeatedly filed frivolous motions and appeals in four different civil cases for the purposes of delay and harassment. Despite the imposition of sanctions on eight occasions from the superior court and on six occasions from the Court of Appeal, the attorney

persisted in abusing the legal process by filing frivolous motions and appeals which included, inter alia, filing briefs that contained completely meritless, arguments and absurd legal contentions, mischaracterizing the record and misdescribing authorities, all of which unnecessarily wasted the time and resources of the parties and the court. *(Id.* at p. 184.) Such conduct constituted moral turpitude. Additionally, the attorney failed to report the sanctions or cooperate with the State Bar investigation.

Although the attorney had practiced for 32 years without prior discipline, in light of the seriousness of the misconduct, the multiple acts of wrongdoing, the significant harm to the parties forced to defend against the attorney's frivolous motions and appeals, the significant harm to the administration of justice, the attorney's complete lack of remorse and insight regarding his misconduct, and the attorney's use of obstructive tactics during the disciplinary proceeding, we recommended, and the Supreme Court approved, disbarment.

Like the attorney in *Varakin,* respondent persisted in abusing the legal process by repeatedly filing pleadings that contained meritless arguments and mischaracterizations for the improper purposes of delay or harassment despite the imposition of sanctions, two separate judgments of contempt, repeated warnings from the court about the impropriety of his actions, and his removal as class counsel. We view respondent's misconduct to be more severe than that in *Varakin* because in addition to filing pleadings for improper

purposes, respondent knowingly misrepresented that a judicial officer misappropriated settlement funds, filed a frivolous appeal of a non-existent order and attempted to mislead an appellate court.

As in *Varakin,* respondent's extensive period of discipline-free practice does not outweigh the seriousness of his misconduct, which is aggravated by his multiple acts of wrongdoing, significant harm to clients and the administration of justice, post-trial ethical misconduct and obdurate refusal to acknowledge the wrongfulness of his actions.

We also consider instructive *Lebbos v. State Bar* (1991) 53 Cal.3d 37 in which an attorney committed multiple acts of misconduct involving moral turpitude including, but not limited to, knowingly making false statements in an effort to disqualify a judge *(id.* at p. 43) and repeatedly making frivolous motions to disqualify judges. *(Ibid.)* Although the attorney had not been disciplined during approximately 11 years of practice, the harm the misconduct caused and the attorney's failure to admit any wrongdoing were important factors the Supreme Court considered in determining disbarment was necessary.

Respondent engaged in deliberate and repeated abuse of the judicial system over an extensive time period. His repeated acts of moral turpitude demonstrate his lack of fitness to continue practicing law and warrant disbarment. (See, e.g., *In the Matter of Dixon, supra,* 4 Cal. State Bar Ct. Rptr. at p. 45 [multiple acts of misconduct involving moral turpitude and dishonesty warrant disbarment].) Further, the

protracted nature of respondent's misconduct, his continued use of the misleading phrase "law offices" on pleadings and his lack of remorse and refusal to acknowledge any wrongdoing raise grave concern that he will not conform his conduct to professional standards but instead continue to pursue abusive legal tactics if given the opportunity. For these reasons, we believe disbarment is appropriate.

III. RECOMMENDATION

We therefore recommend that respondent RICHARD ISAAC FINE be disbarred from the practice of law in this state and that his name be stricken from the roll of attorneys licensed to practice. We further recommend that he be ordered to comply with the provisions of rule 9.20 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court's order in this matter. We further recommend that the State Bar be awarded costs in accordance with Business and Professions Code section *6086.10,* such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

IV. ORDER OF INACTIVE ENROLLMENT

Because the hearing judge recommended disbarment, he properly ordered that respondent be involuntarily enrolled as an inactive member of the State Bar as required by Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure

of the State Bar, rule 220(c). The hearing judge's order of involuntary inactive enrollment became effective on October 17, 2007, and respondent has remained on involuntary inactive enrollment since that time and will remain on involuntary inactive enrollment pending the final disposition of this proceeding.

REMKE, P.J.

We concur:

EPSTEIN, J.

STOVITZ, J.*

[Certificate of Service Omitted in Printing]

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* Hon. Ronald W. Stovitz, Retired Presiding Judge of the State Bar Court, sitting by designation of the Presiding Judge.

BUSINESS AND PROFESSIONS CODE SECTION 6007(c)

(c) (1) The board may order the involuntary inactive enrollment of an attorney upon a finding that the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or to the public or upon a finding based on all the available evidence, including affidavits, that the attorney has not complied with Section 6002.1 and cannot be located after reasonable investigation.

(2) In order to find that the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or the public pursuant to this subdivision, each of the following factors shall be found, based on all the available evidence, including affidavits:

(A) The attorney has caused or is causing substantial harm to the attorney's clients or the public.

(B) The attorney's clients or the public are likely to suffer greater injury from the denial of the involuntary inactive enrollment than the attorney is likely to suffer if it is granted, or there is a reasonable likelihood that the harm will reoccur or continue. Where the evidence establishes a pattern of behavior, including acts likely to cause substantial harm, the burden of proof shall shift to the attorney to show that there is no reasonable likelihood that the harm will reoccur or continue.

(C) There is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary matter.

(3) In the case of an enrollment under this subdivision, the underlying matter shall proceed on an expedited basis.

(4) The board shall order the involuntary inactive enrollment of an attorney upon the filing of a recommendation of disbarment after hearing or default. For purposes of this section, that attorney shall be placed on involuntary inactive enrollment regardless of the membership status of the attorney at the time.

(5) The board shall formulate and adopt rules of procedure to implement this subdivision.

In the case of an enrollment pursuant to this subdivision, the board shall terminate the involuntary inactive enrollment upon proof that the attorney's conduct no longer poses a substantial threat of harm to the interests of the attorney's clients or the public or where an attorney who could not be located proves compliance with Section 6002.1.

RULES OF PROCEDURE
Rule 305(a) and (b)

305(a) Upon review pursuant to rule 301 of decisions of rulings of the Hearing Department, the Review Department shall independently review the record and may adopt findings, conclusions and a decision or recommendation at variance with those of the hearing judge. The Review Department may remand a proceeding to the Hearing Department for a new trial on specified issues, for a trial de novo, or for other proceedings. Proceedings on remand shall be held before the same hearing judge unless the Review Department orders otherwise or that judge is unavailable. Findings of fact of the hearing judge resolving issues pertaining to credibility of witnesses shall be given great weight.

(b) The Review Department may take action as to an issue whether or not that issue was raised in the request for review or briefs of any party. If the Review Department is considering taking action as to an issue not raised by any party, the Review Department shall advise the parties in writing of such issues prior to oral argument and any party may file a supplemental brief regarding such issues. If the Review Department does not advise the parties in advance of oral argument, supplemental post-trial briefs shall be permitted, or a rehearing shall be ordered upon timely motion by any party under rule 309. (Emphasis added.)

CALIFORNIA CODE §§68220-68222

§68220. (a) Judges of a court whose judges received supplemental judicial benefits provided by the county or court, or both, as of July 1, 2008, shall continue to receive supplemental benefits from the county or court then paying the benefits on the same terms and conditions as were in effect on that date.

(b) A county may terminate its obligation to provide benefits under this section upon providing the Administrative Director of the Courts and the impacted judges with 180 days' written notice. The termination shall not be effective as to any judge during his or her current term while that judge continues to serve as a judge in that court or, at the election of the county, when that judge leaves office. The county is also authorized to elect to provide benefits for all judges in the county.

§68221. To clarify ambiguities and inconsistencies in terms with regard to judges and justices and to ensure uniformity statewide, the following shall apply for purposes of Sections 68220 to 68222, inclusive:

(a) "Benefits" and "benefit" shall include federally regulated benefits, as described in Section 71627, and deferred compensation plan benefits, such as 401(k) and 457 plans, as described in Section 71628, and may also include professional development allowances.

(b) "Salary" and "compensation" shall have the meaning as set forth in Section 1241.

§68222. Nothing in this act shall require the Judicial Council to increase funding to a court for the purpose of paying judicial benefits or obligate the state or the Judicial Council to pay for benefits previously provided by the county, city and county, or the court.

CAL. CONSTITUTION, Art. 6, Section 19

SEC. 19. The Legislature shall prescribe compensation for judges of courts of record.

A judge of a court of record may not receive the salary for the judicial office held by the judge while any cause before the judge remains pending and undetermined for 90 days after it has been submitted for decision.